UNITED STATES DISTRIC COURT
SOUTHERN DISTRICT OF NEW YORK

NOW-CASTING ECONOMICS, LTD.	Civil Action No. _____
Plaintiff,	
-against-	**COMPLAINT**
ECONOMIC ALCHEMY LLC,	
Defendant.	

Plaintiff Now-Casting Economics, Ltd. ("Plaintiff"), by its attorneys, Olshan Frome

Wolosky LLP, alleges on knowledge as to its own acts and otherwise on information and belief as

follows:

INTRODUCTION

1.   Plaintiff is a specialist economic prediction and forecasting business, formed in

2010, that publishes high frequency economic forecasting data from an automated platform. At the

core of Plaintiff's business is an advanced statistical model, known as a nowcasting model, which

was designed by two of Plaintiff's founders: Domenico Giannone and Lucrezia Reichlin. Their

work in developing nowcasting models is recorded in papers written as early as 2005. Mr.

Giannone and Ms. Reichlin are considered to be among the pioneers in the field of economic

nowcasting. A nowcast or now-cast in economics is known to the relevant consuming public as a

term to identify and describe the prediction of economic conditions, such as GDP growth, in the

present or near-present. Nowcasting is known to the relevant consuming public as a term used to

identify and describe the method of providing predictions or estimates of present or near-present

economic or financial conditions using statistical models. Plaintiff has been using the name Now-

Casting Economics, Ltd. since at least as early as 2010, and has been using the name in the United States since at least as early as May of 2011.

2.   Despite the generic and descriptive uses of the terms nowcast, now-cast, nowcasting, and now-casting, and despite Plaintiff's long-standing and prior use of its name, Defendant Economic Alchemy, LLC ("Defendant"), sent Plaintiff a cease-and-desist letter on December 12, 2016 asserting that Plaintiff's use of the name Now-Casting Economics, Ltd. ("Contested Name") infringed two of Defendant's registered trademarks: US Registration No. 4,341,813 for the mark NOWCAST in Class 35 and US Registration No. 4,341,811 for the mark NOW-CAST in Class 35 (collectively "Defendant's Registrations"). In the letter, Defendant also referenced a pending trademark application for the mark NOWCAST, Serial No. 86/539,705 in Classes 35, 36 and 42 ("Defendant's Application"). Defendant demanded that Plaintiff cease and desist from using the Contested Name and that Plaintiff transfer its domain name – www.now-casting.com – to Plaintiff. The NOWCAST and NOW-CAST marks are collectively referred to herein as the "Challenged Marks."

3.   Because the terms nowcast and now-cast are generic and descriptive as applied to Defendant's services, and because Plaintiff had long-standing and prior use of the Contested Name and of the terms nowcast and nowcasting in general, Plaintiff did not cease and desist from using the Contested Name or the terms nowcast or nowcasting and did not transfer its domain name to Defendant. Instead, Plaintiff instituted proceedings in the United States Patent and Trademark Office to cancel Defendant's Registrations and to oppose Defendants' Application (collectively, "TTAB Proceedings"). In the TTAB Proceedings, Defendant has continued to allege that Plaintiff is infringing Defendant's trademarks, including making that allegation in filings as late as March 2018.

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4.   Because the issue of infringement will not be decided in the TTAB Proceedings, Plaintiff now brings this action pursuant to the Lanham Act (15 U.S.C. § 1051 *et seq.*); 28 U.S.C. §§ 2201 and 2202; and Federal Rules of Civil Procedure 57, in order to remove the cloud of uncertainty created by Defendant's cease-and-desist letter and repeated allegations of infringement. Specifically, Plaintiff seeks a declaration that its use of the Contested Name, the terms nowcast, nowcasting and derivations thereof, do not infringe any of Defendant's intellectual property rights. This Complaint further seeks the cancellation of Defendant's Registrations based on the fact that: (a) the terms nowcast and now-cast have long been generic in the economics and financial services industries; (b) if not generic, at a minimum, those terms are merely descriptive and incapable of acquiring any distinctive character as an indicator of source; and (c) by filing applications and receiving registrations for such generic terms, Defendant committed fraud on the USPTO because Defendant had actual knowledge of the generic uses of the terms nowcast and now-cast before Defendant filed its applications to register the terms as trademarks.

PARTIES

5.   Plaintiff is specialist economic prediction and forecasting business, formed in 2010, that publishes high frequency economic forecasting data from an automated platform. It is a United Kingdom corporation with its primary place of business at 58 Marylebone High Street, London W1U 5HT, United Kingdom.

6.   Defendant is financial technology company that claims to publish economic forecasts and estimates. It is a New York limited liability company, with a principal place of business at 888 8th Avenue #333, New York, NY 10019 at which it regularly conducts business.

JURISDICTION AND VENUE

7.   This Court has subject matter jurisdiction over this action pursuant to the Lanham Act (15 U.S.C. § 1051 *et seq.*); 28 U.S.C. § 1331; and the Declaratory Judgment Act (25 U.S.C. §

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2201). Venue is proper in this district pursuant to 28 U.S.C. §§ 1391, 1400(a) as Defendant is a

New York limited liability company and maintains an office in New York City, and is therefore

subject to the personal jurisdiction of this Court.

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FACTUAL BACKGROUND

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A.   Background of Plaintiff

8.   As alleged above, Plaintiff is a specialist economic prediction and forecasting

business, publishing high frequency economic forecasting data from an automated platform. At

the core of the business is an advanced statistical model, known as a nowcasting model, which was

designed by two of Plaintiff's founders: Domenico Giannone and Lucrezia Reichlin. Their work

in developing nowcasting models is recorded in papers written as early as 2005. Mr. Giannone and

Ms. Reichlin are considered to be among the pioneers in the field of economic nowcasting.

9.   Plaintiff was formed in 2010 and began using the Now-Casting Economics Ltd.

name in the United States since at least as early as May 2011. Plaintiff's website can be seen at

www.now-casting.com.

10.   A nowcast or now-cast in economics is known to the relevant consuming public as

a term to identify and describe the prediction of economic conditions, such as GDP growth, in the

present or near-present. Nowcasting is known to the relevant consuming public as a term used to

identify and describe the method of providing predictions or estimates of present or near-present

economic or financial conditions using statistical models.

11.   Plaintiff's founders began using the term nowcasting to identify and describe a

method of providing predictions or estimates of present or near-present economic or financial

conditions as early as 2005, when Mr. Giannone and Ms. Reichlin (together with an individual

named David Small) wrote an article entitled: "Nowcasting: The real-time informational content

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of macroeconomic data", which can be found at https://www.federalreserve.gov/pubs/feds/2005/200542/200542pap.pdf and is attached hereto as Exhibit 1.

12.   Mr. Giannone and Ms. Reichlin continued to conduct research and write articles on a method of providing predictions or estimates of present or near-present economic or financial conditions, using the terms nowcast or now-cast to identify and describe a prediction of economic conditions in the present or near-present, and using the terms nowcasting or now-casting to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions, including:

- 2005 article entitled "Monetary Policy in Real Time", which can be found at http://www.nber.org/chapters/c6670.pdf and is attached hereto as Exhibit 2.

- 2006 article entitled "Nowcasting GDP and inflation: the real-time informational content of macroeconomic data releases", which can be found at https://www.econstor.eu/bitstream/10419/153067/1/ecbwp0633.pdf and is attached hereto as Exhibit 3.

- 2008 article entitled "Incorporating Conjunctural Analysis in Structural Models," which can be found at https://pdfs.semanticscholar.org/e77a/7827b7c04a6c17f4a042066bd7ce61724b68.pdf and is attached hereto as Exhibit 4.

- 2008 article entitled "Short-term forecasts of euro area GDP growth" which can be found at https://www.econstor.eu/bitstream/10419/153383/1/ecbwp0949.pdf and is attached hereto as Exhibit 5.

- 2009 article entitled "Nowcasting Euro Area Economic Activity in Real-Time: The Role of Confidence Indicators" which can be found at http://www.csef.it/wp/wp240.pdf and is attached hereto as Exhibit 6.

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- 2010 article entitled "Nowcasting" which can be found at http://dipot.ulb.ac.be/dspace/bitstream/2013/57648/1/2010-021-BANBURA-GIANNONE-REICHLIN-nowcasting.pdf and is attached hereto as Exhibit 7.

- 2011 article entitled "Nowcasting with daily data" which can be found at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.399.6650&rep=rep1&type=pdf and is attached hereto as Exhibit 8.

13.   On December 19, 2010 (prior to Defendant's alleged date of first use of the Challenged Marks), one of Plaintiff's founders, Jasper McMahon, created a Wikipedia page describing nowcasting as it is used in economic predictions, specifically a method of providing predictions or estimates of present or near-present economic or financial conditions. Attached hereto as Exhibit 9 is a true and correct copy of the December 19, 2010 version of the Wikipedia page. According to the historical records of Wikipedia, the nowcasting Wikipedia page was updated 13 more times prior to Defendant's alleged date of first use of the Challenged Mark. Attached hereto as Exhibit 10 are copies of the other versions of the Wikipedia page that pre-date Defendant's alleged first use date. In each of these revisions, the terms nowcast or now-cast are used to identify and describe a prediction of economic conditions and the terms nowcasting or now-casting are used to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions.

14.   All of the foregoing publications were and are widely available throughout the world, including in the United States. In addition, Plaintiff's founders were featured speakers at several economics conferences around the world, including in the United States, where they spoke on the topic of nowcasting prior to Defendant's claimed first use date.

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B. Background of Defendant

15.   Defendant claims to be in the business of economic prediction, specifically utilizing Defendant's technology to create its own nowcasts and perform nowcasting analysis for others. Defendant uses the Challenged Marks in connection with its nowcast services. According to Defendant's website "The Now-Cast System utilizes proprietary, patent-pending technology that combines Big Data with data-mining, machine learning, and sophisticated econometrics to produce accurate current and future estimates of key economic indicators," which is, in its simplest terms, a method of providing predictions or estimates of present or near-present economic or financial conditions – *i.e.* a nowcast. Attached hereto as Exhibit 11 is a printout from Defendant's websites describing the business of Defendant and its use of the Challenged Marks. While Defendant may have developed its own formulas, algorithms, and/or technology for producing nowcasts, Defendant was in no way the first economic predictor to use the term. Defendant did not coin that term, and by the time Defendant started using Challenged Marks, others in the economic prediction field had already been using the term to identify and describe a genus of services, namely, the prediction of economic conditions in the present or near-present for many years.

16.   On May 28, 2013, Defendant obtained a registration for NOWCAST in Class 35 for the following services:

> Analysis of market research data and statistics; Analyzing and compiling data for measuring the performance of financial markets; Business advisory services, consultancy and information; Business data analysis; Business evaluation of finance and economics; Business feasibility studies; Business information services and appraisals; Business research services in the field of finance and economic analysis, risk management, signal extraction methods, statistical analysis, econometric models, real-time interpretation and forecasting, customized synthetic variables, creative use of data to identify market anomalies and alpha signals to enhance investment strategies, expectations data, survey data, macroeconomics, industry data, company fundamental data, social media data and meta data; Compilation and systematisation of information in databanks; Compilation and systemization of information into computer databases; Economic forecasting and analysis; Market analysis and research services; Market assessment services;

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Market reports and studies; Market research; Market research and business analyses; Market research and market intelligence services; Market research by means of a computer database; Market research services; Market research studies; Market study and analysis of market studies; Preparation of reports relating to finance and investments; Prognosis on economical affairs; Providing information and analysis in the fields of economics and business; Providing information in the field of economics; Providing statistical information; Provision of market research information; the aforementioned expressly excluding data and information related to current weather conditions and short-term weather forecasts.

17.   Also on May 13, Defendant obtained a registration for NOW-CAST in Class 35 for

the following services:

Analysis of market research data and statistics; Analyzing and compiling data for measuring the performance of financial markets; Business advisory services, consultancy and information; Business data analysis; Business evaluation of finance and economics; Business feasibility studies; Business information services and appraisals; Business research services in the field of finance and economic analysis, risk management, signal extraction methods, statistical analysis, econometric models, real-time interpretation and forecasting, customized synthetic variables, creative use of data to identify market anomalies and alpha signals to enhance investment strategies, expectations data, survey data, macroeconomics, industry data, company fundamental data, social media data and meta data; Compilation and systematisation of information in databanks; Compilation and systemization of information into computer databases; Economic forecasting and analysis; Market analysis and research services; Market assessment services; Market reports and studies; Market research; Market research and business analyses; Market research and market intelligence services; Market research by means of a computer database; Market research services; Market research studies; Market study and analysis of market studies; Preparation of reports relating to finance and investments; Prognosis on economical affairs; Providing information and analysis in the fields of economics and business; Providing information in the field of economics; Providing statistical information; Provision of market research information; the aforementioned expressly excluding data and information related to current weather conditions and short-term weather forecasts.

18.   Defendant's Registrations claim a first use date in United States commerce of

January 25, 2012 and a first use anywhere of November 27, 2011.

19.   Each of the services described in Defendant's Registrations encompass economic

predicting and forecasting, including a prediction of economic conditions in the present or near-

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present, and a method of providing predictions or estimates of present or near-present economic or financial conditions.

C.   Descriptive and/or Generic Uses of Nowcast and Nowcasting Prior to Defendant's Claimed Date of First Use

20.   In addition to the descriptive and/or generic uses of nowcast and nowcasting in the articles referenced above that were written by Plaintiff's founders and published prior to Defendant's claimed date of first use of the Challenged Marks, other economists and researchers repeatedly used the terms nowcast or now-cast to identify and describe a prediction of economic conditions in the present or near-present, and terms nowcasting or now-casting to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions, in scholarly research articles and books prior to the date that Defendant claims it began using the Challenged Marks. Thus, by the time Defendant began using the Challenged Marks, the terms were already known by economists, researchers, professors, and those in the financial industry as generic words to identify and describe a type of economic prediction and method, namely a method of providing predictions or estimates of present or near-present economic or financial conditions. Below are just a few of the many scholarly articles and books published prior to Defendant's claimed first use date that show the widespread generic and descriptive uses of the terms nowcast or now-cast to identify and describe a prediction of economic conditions in the present or near-present, and the terms nowcasting or now-casting to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions.

21.   In 1996, Paul Schreyer and Corrinne Emery published "Short-Term Indicators: Using Qualitative Indicators to Update Production Indices", which can be found at http://www.oecd-

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ilibrary.org/docserver/download/728450723264.pdf?expires=1517505915&id=id&accname=gue
st&checksum=CDCDCA58C0AB5579FBA64356A38DC476 and relevant pages of which are

attached hereto as Exhibit 12[1], that described the "results of a pilot study for six industrial sectors

in seven Member countries whereby short-term qualitative indicators are used to 'nowcast' a

quantitative indicator, the production index." The term nowcast is used several times in the article

to describe a type of economic prediction.

22.   In 2002, Alberto Baffigi, Roberto Golinelli, and Guiseppe Parigi published "Real-

time GDP Forecasting in the Euro Area", which can be found at http://www.bancaditalia.it/

pubblicazioni/temi-discussione/2002/2002-0456/tema_456_02.pdf and relevant pages of which

are attached hereto as Exhibit 13, in which the term nowcast is repeatedly used in a generic and/or

descriptive sense to identify and describe a method of providing predictions or estimates of present

or near-present economic or financial conditions, for example the article references the "the two-

step-ahead nowcast."

23.   In 2001, Gabor Pula and Adam Reiff published "Can Business Confidence

Indicators Be Useful to Predict Short-Term Industrial Growth in Hungary?", which can be found

at http://pdc.ceu.hu/archive/00004457/01/bs2002_3.pdf and relevant pages of which are attached

hereto as Exhibit 14, in which the terms nowcast and nowcasting are used generically throughout

the article.

24.   In 2003, Michel Mouchart and Jeroen V.K. Rombouts published "Clustered Panel

Data Models: An Efficient Approach for Nowcasting from Poor Data", which can be found at

https://poseidon01.ssrn.com/delivery.php?ID=97611807209602207910611601806510109605900

80095032024041078115022074022107098094067125031006120043049043112512706800091

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[1] Due to the size of certain documents, only certain pages containing the relevant terms at issue are attached hereto.
Plaintiff intends to present the full publications during the submission of evidence in this matter.

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171150540160120520680801060250100020740060230860541050870041211050850941200930 881231070790030640971120841230891220861030092118070&EXT=pdf and relevant pages of which are attached hereto as Exhibit 15, in which the authors use the term nowcast repeatedly and in the title in a generic and/or descriptive sense to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions.

25.   Also in 2003, Andres Cors and Vladimir Kouzine published "An Approach for Timely Estimations of the German GDP", the abstract of which can be found at https://www.infona.pl/resource/bwmeta1.element.springer-af74fbd1-dfd1-3c96-ad48-8e0cf65353cc and is attached hereto as Exhibit 16, using the term nowcast in a generic and/or descriptive sense to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions.

26.   In 2004, Alberto Baffigi, Roberto Golinelli, and Guiseppe Parigi published "Bridge Models for Forecast the Euro Area GDP", which can be found at https://www.sciencedirect.com/science/article/pii/S0169207003000670 and relevant pages of which are attached hereto as Exhibit 17, in which the term nowcast is used repeatedly to identify and describe a type of economic prediction of present or near-present economic or financial conditions.

27.   In 2005, Michel Mouchart and Jeroen V.K. Rombouts published "Clustered panel data models: An efficient approach for nowcasting from poor data", which can be found at http://neumann.hec.ca/pages/jeroen.rombouts/research/mouchart_rombouts.pdf and relevant pages of which are attached hereto as Exhibit 18, in which the term nowcasting is used generically and/or descriptively in the title and the terms nowcasting and nowcast are used descriptively and/or generically many times in the text to identify and describe an economic prediction based on the

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present or near-present and a method of providing predictions or estimates of present or near-present economic or financial conditions.

28.   Also in 2005, Louis C. Nunes published an article entitled "Nowcasting Quarterly GDP Growth in a Monthly Coincident Indicator Model", which can be found at http://onlinelibrary.wiley.com/doi/10.1002/for.969/full and relevant pages of which are attached hereto as Exhibit 19, in in which the term nowcasting is used generically and/or descriptively in the title and the terms nowcasting and nowcast are used descriptively and/or generically many times in the text to identify and describe an economic prediction based on the present or near-present and a method of providing predictions or estimates of present or near-present economic or financial conditions.

29.   In 2006, Filippo Altissimo, Riccardo Cristadoro, Mario Forni, Marco Lippi, and Giovanni Veronese published "New Eurocoin: Tracking Economic Growth in Real Time", which can be found at https://www.bancaditalia.it/pubblicazioni/altri-atti-seminari/2006/Eurocoin.pdf and relevant pages of which are attached hereto as Exhibit 20, in which the terms nowcasting and nowcast are used descriptively and/or generically many times in the text to identify and describe an economic prediction based on the present or near-present and a method of providing predictions or estimates of present or near-present economic or financial conditions.

30.   Also in 2006, Marta Banbura and Gerhard Rünstler published "A look into the factor model black box: Publication lags and the role of hard and soft data in forecasting GDP", which can be found at https://www.banqueducanada.ca/wp-content/uploads/2010/09/runstler.pdf and relevant pages of which are attached hereto as Exhibit 21, terms nowcasting and nowcast are used descriptively and/or generically many times in the text to identify and describe an economic

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prediction based on the present or near-present and a method of providing predictions or estimates of present or near-present economic or financial conditions.

31.   A number of articles were published in 2007 in which the terms nowcast or now-cast are used to identify and describe a prediction of economic conditions in the present or near-present, and the terms nowcasting or now-casting are used to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions. For example:

(a)   Massimiliano Marcellino and Christan Schumacher published "Factor-MIDAS for Now- and Forecasting with Ragged-Edge Data: A Model Comparison for German GDP", which can be found at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.399.136&rep=rep1&type=pdf and is attached hereto as Exhibit 22.

(b)   Francesca Monti published "Forecasting with Judgment and Models", which can be found at https://www.researchgate.net/profile/Argia_Sbordone/publication/228367516_Forecasting_with_Judgment_and_Models/links/53d2bb690cf220632f3cac87.pdf and relevant pages of which are attached hereto as Exhibit 23.

(c)   Troy Matheson, James Mitchell, and Brian Silverstone published "Nowcasting and Predicting Data Revisions in Real Time Using Qualitative Panel Survey Data", which can be found at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.152.879&rep=rep1&type=pdf and relevant pages of which are attached hereto as Exhibit 24.

(d)   Sarah Gelper and Christophe Croux published "The Predictive Power of the European Economic Sentiment Indicator", which can be found at https://lirias.kuleuven.be/bitstream/123456789/120562/1/kbi_0707.pdf and relevant pages of which are attached hereto as Exhibit 25.

(e)   Antonio Jose Morgado, Luis Catela Nunes, and Susana Salvado published "Nowcasting an Economic Aggregate with Disaggregate Dynamic Factors: An Application to Portuguese GDP", which can be found at http://www.gee.gov.pt/RePEc/WorkingPapers/mns.pdf and is attached hereto as Exhibit 26.

(f)   John W. Galbraith and Greg Tkacz published "Electronic Transactions as High-Frequency Indicators of Economic Activity", which can be found at https://www.econstor.eu/bitstream/10419/53775/1/559057636.pdf and relevant pages of which are attached hereto as Exhibit 27.

32.   A number of articles were published in 2008 in which the terms nowcast or now-cast are used to identify and describe a prediction of economic conditions in the present or near-present, and the terms nowcasting or now-casting are used to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions. For example:

(a)   Michael P. Clements and Ana Beatriz Galvao published "Macroeconomic Forecasting with Mixed-Frequency Data: Forecasting Output Growth in the United States", which can be found at https://www.researchgate.net/profile/Michael_Clements3/publication/23954330_Macroeconomic_Forecasting_With_Mixed-Frequency_Data/links/00b7d515ed99b302ad000000/Macroeconomic-Forecasting-With-Mixed-Frequency-Data.pdf and is attached hereto as Exhibit 28.

(b)   Olivier Darne published "Using business survey in industrial and services sector to nowcast GDP growth: The French case", which can be found at https://www.researchgate.net/profile/Olivier_Darne/publication/4804580_Using_business_surve

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y_in_industrial_and_services_sector_to_nowcast_GDP_growthThe_French_case/links/09e4150b cb53a0e3ee000000.pdf and relevant pages of which are attached hereto as Exhibit 29.

(c)   Konstantin A. Kholodilin and Stefan Kooths published "A New Business Cycle Barometer for Germany: Construction and Evaluation of the Nowcast Accuracy", which can be found at http://studyres.com/doc/8784643/-download--177-kb- and relevant pages of which are attached hereto as Exhibit 30.

(d)   Antonello D'Agostino, Kieran McQuinn and Derry O'Brien published "Now-casting the Irish GDP", which can be found at https://www.researchgate.net/publication/ 23786564_Now-casting_Irish_GDP and relevant pages of which are attached hereto as Exhibit 31.

(e)   Tommaso Proietti published "Cross-Sectional and Temporal Aggregation Constraints: Nowcasting Monthly GDP and its Main Components", the abstract of which can be found at https://econpapers.repec.org/paper/pramprapa/6860.htm and is attached hereto as Exhibit 32.

(f)   Knut Are Aastveit and Tørres G. Trovik published "Estimating the Output Gap in Real Time: A Factor Model Approach", which can be found at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.458.6092&rep=rep1&type=pdf and relevant pages of which are attached hereto as Exhibit 33.

(g)   Kevin Lee, Nils Olekalns and Kalvinder K. Shields published "Nowcasting, Business Cycle Dating and the Interpretation of New Information when Real-Time Data are Available", which can be found at http://fbe.unimelb.edu.au/__data/assets/pdf_file/ 0006/802716/1040.pdf and relevant pages of which are attached hereto as Exhibit 34.

33.   A number of articles were published in 2009 in which the terms nowcast or now-cast are used to identify and describe a prediction of economic conditions in the present or near-

present, and the terms nowcasting or now-casting are used to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions. For example:

(a) Vladimir Kuzin, Massimiliano Marcellino, and Christian Schumacher published "Pooling Versus Model Selection for Nowcasting with Many Predictors: an Application to German GDP", which can be found at https://www.econstor.eu/bitstream/10419/27657/1/200903dkp.pdf and relevant pages of which are attached hereto as Exhibit 35.

(b) Jennifer L. Castle, Nicholas W.P. Fawcett and David F. Hendry published "Nowcasting is not just contemporaneous forecasting", which can be found at https://www.researchgate.net/publication/255638791_Nowcasting_is_not_just_contemporaneous _forecasting and is attached hereto as Exhibit 36.

(c) Kris Boudt, Valentin Todoroy, and Shyam Upadhyaya published "Nowcasting Manufacturing Value Added for Cross- Country Comparison", which can be found at https://s3.amazonaws.com/academia.edu.documents/39519821/Nowcasting_Manufacturing_ Value_Added_for20151029-10107-1nw267i.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y5 3UL3A&Expires=1517518335&Signature=gczt4yLHeqRBZPaxxqJyLENvXYg%3D&response-content-disposition=inline%3B%20filename%3DNowcasting_manufacturing_value_added_ for.pdf and is attached hereto as Exhibit 37.

34. A number of articles were published in 2010 in which the terms nowcast or now-cast are used to identify and describe a prediction of economic conditions in the present or near-present, and the terms nowcasting or now-casting are used to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions. For example:

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(a)   Frank Schorfheide and Edward Herbst published "Evaluating DSGE Model Forecasts of Comovements", which can be found at https://www.phil.frb.org/-/media/research-and-data/events/2010/data-revision/papers/fe_v2.pdf and relevant pages of which are attached hereto as Exhibit 38.

(b)   S. Boragan Aruoba and Francis X. Diebold published "Real-Time Macroeconomic Monitoring: Real Activity, Inflation, and Interaction", which can be found at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.525.8106&rep=rep1&type=pdf   and relevant pages of which are attached hereto as Exhibit 39.

(c)   Konstantin A. Kholodilin, Maximilian Podstawski, and Boriss Siliverstovs published "Do Google Searches Help in Nowcasting Private Consumption? A Real-Time Evidence for the US", which can be found at https://www.research-collection.ethz.ch/bitstream/handle/20.500.11850/29175/1/eth-1289-01.pdf and is attached hereto as Exhibit 40.

(d)   Elena Andreou, Eric Ghysels, and Andros Kourtellos published "Forecasting with mixed-frequency data", which can be found at http://www.unc.edu/~eghysels/papers/Forecasting_chapter_31Jan_new.pdf and relevant pages of which are attached hereto as Exhibit 41. The authors also note in a footnote that "Nowcasting is studied at length by Doz, Giannone, and Reichlin (2008), Doz, Giannone, and Reichlin (2006), Stock (2006), Angelini, Camba-Mendez, Giannone, Rünstler, and Reichlin (2008), Giannone, Reichlin, and Small (2008), Moench, Ng, and Potter (2009), among others" – Giannone and Reichlin being two of the founders of Plaintiff.

(e)   Thomas Gilbert, Chiara Scotti, Georg Strasser, and Clara Vega published "Why Do Certain Macroeconomic News Announcements Have a Big Impact on Asset Prices?", which can be found at https://files.stlouisfed.org/files/htdocs/conferences/applied

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econometrics/2010/gssv_hotcopy.pdf and relevant pages of which are attached hereto as Exhibit 42.

(f)   James Rossiter published "Nowcasting the Global Economy", which can be found at https://files.stlouisfed.org/files/htdocs/conferences/appliedeconometrics/2010/gssv_hotcopy.pdf and relevant pages of which are attached hereto as Exhibit 43.

(g)   Anna Norin published "Nowcasting of the Gross Regional Product", which can be found at https://www.econstor.eu/bitstream/10419/119087/1/ERSA2010_0768.pdf and is attached hereto as Exhibit 44.

(h)   Joelle Liebermann published "Real-time Nowcasting of GDP: Factor Model Versus Professional Forecasters", which can be found at https://mpra.ub.uni-muenchen.de/28819/1/MPRA_paper_28819.pdf and is attached hereto as Exhibit 45.

35.   On October 12, 2010, economist and Professor of Economics Erik Brynjolfsson wrote in his economics blog: "When I met with Ben Bernanke last fall, I encouraged the Fed to rely more heavily on the vast amounts of "nanodata" and "nowcasting" available via the web and other sources to get more fine-grained and timely information about the state of the economy", using nowcasting to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions. Attached hereto as Exhibit 46 is a printout of the blog entry found at http://www.economicsofinformation.com/2010/10/nanodata-at-work-google-price-index.html.

36.   A number of articles and two books were published in 2011 prior to Defendant's claimed date of first use of the Challenged Mark in which the terms nowcast or now-cast are used to identify and describe a prediction of economic conditions in the present or near-present, and the

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terms nowcasting or now-casting are used to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions. For example:

(a)   In January 2011, Jon Faust, Simon Gilchrist, Jonathan H. Wright, and Egon Zakrajsek published "Credit Spreads as Predictors of Real-Time Economic Activity: A Bayesian Model-Averaging Approach", which can be found at http://www.nber.org/papers/w16725.pdf and relevant pages of which are attached hereto as Exhibit 47.

(b)   Also in January 2011, Matthew S. Yiu and Kenneth K. Chow published "Nowcasting Chinese GDP: Information Content of Economic and Financial Data", which can be found   at   http://hkimr.org/uploads/publication/75/ub_full_0_2_268_wp-no-04_2011-final-.pdf and is attached hereto as Exhibit 48.

(c)   In February 2011, Nikolaos Askitas and Klaus F. Zimmermann published "Nowcasting   Business   Cycles   Using   Toll   Data",   which   can   be   found   at http://ftp.iza.org/dp5522.pdf and relevant pages of which are attached hereto as Exhibit 49.

(d)   In March 2011, Kajal Lahiri and George Monokroussos published "Nowcasting US GDP: The role of ISM Business Surveys", which can be found at https://pdfs.semanticscholar.org/02a4/c44e4f7eb03a436623af8e8ffe28fec7c511.pdf   and   is attached hereto as Exhibit 50.

(e)   In the first quarter of 2011, Jonas Sorensen published "Indicator Models for Private   Consumption",   which   can   be   found   at   https://www.nationalbanken.dk/ en/publications/Documents/2011/05/MON1Q_P1_2011_Indicator%20Models%20for%20Private %20Consumption.pdf and is attached hereto as Exhibit 51

(f)   In June of 2011, Anthony Garratt, James Mitchell, and Shaun P. Vahey published "Measuring Output Gap Nowcast Uncertainty", which can be found at

https://poseidon01.ssrn.com/delivery.php?ID=80111810010012308709011712108203011809704707205007100909800406906707212201102602810611804903812700500203506912407201707210601012204703208302312107108506906609410070220370530210690881180121241201150030000060650840071240710191161110660900311210670290 00&EXT=pdf and relevant

pages of which are attached hereto as Exhibit 52.

(g)   On July 8, 2011, a book was published entitled *The Oxford Handbook of Economics Forecasting*, which devoted an entire chapter to "Nowcasting". Attached hereto as Exhibit 53 is a true and correct copy of the relevant sections of this book.

(h)   On July 22, 2011, William A. Branch published "Nowcasting and the Taylor Rule", which can be found at https://www.economics.uci.edu/files/docs/faculty_ review/nowcast_2011_wp_0.pdf and is attached hereto as Exhibit 54.

(i)   On July 26, 2011, a book was published entitled *Economics Forecasting and Policy*, which uses the term nowcast several times. Attached hereto as Exhibit 55 is a true and correct copy of relevant sections of this book.

37.   The articles and books referenced above are just a small sampling of the many articles and publications in the economics field that show the vast generic and/or descriptive usage of the terms nowcast or now-cast to identify and describe a prediction of economic conditions in the present or near-present, and the terms nowcasting or now-casting to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions – all prior to the time Defendant claims to have started using the Challenged Marks. It is clear that by the time Defendant allegedly began using the Challenged Marks to conduct Defendant's own economic predictions using a method of providing predictions or estimates of present or near-present economic or financial conditions, the term was already understood by the

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relevant consuming public to mean a prediction of economic conditions in the present or near-present. Thus, while Defendant can certainly *use* the Challenged Marks in its economic prediction business, Defendant does not have the exclusive right to use the term nowcast or the term now-cast to perform services creating economic nowcasts any more than a weather forecaster has the exclusive right to use the term forecast to perform services creating weather forecasts.

D.   Generic and/or Descriptive Uses of Nowcast and Nowcasting by Defendant's Founder

38.   Defendant's principal, Giselle Guzman, wrote and published articles prior to Defendant's claimed first use date in which Ms. Guzman herself uses the term nowcast in a descriptive and/or generic manner to identify and describe a prediction of economic conditions in the present or near-present. Ms. Guzman even references Plaintiff's founders' articles regarding nowcasting in Ms. Guzman's own articles. Clearly, when Ms. Guzman wrote these articles, she, like other economists, understood the term nowcast to mean a prediction of economic conditions in the present or near-present and the term nowcasting to mean a method of providing predictions or estimates of present or near-present economic or financial conditions.

39.   For instance, in an article entitled "Using sentiment to predict GDP growth and stock returns" dated June 2008, which can be found at https://mpra.ub.uni-muenchen.de/36505/1/MPRA_paper_36505.pdf, and is attached hereto as Exhibit 56, Ms. Guzman uses the term now-casting to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions, writing: "Both **now-casting** and forecasting of GDP growth are aided by the addition of sentiment data to the CQM model, since both the contemporaneous and lagged sentiment factors are statistically significant."

40.   In another article, entitled "An inflation expectations horserace", dated January 2010, which can be found at https://mpra.ub.uni-muenchen.de/36511/2/MPRA_paper_36511.pdf

and is attached hereto as Exhibit 57, Ms. Guzman again uses the term nowcast to identify and describe a prediction of economic conditions in the present or near-present, writing: "Guzman (2008) shows how a composite factor constructed from a collection of surveys can improve both **nowcasts** and forecasts of aggregate stock returns as well as GDP growth" (emphasis added). Ms. Guzman also references Plaintiff's founders in this article, stating: "Similarly, Giannone, Reichlin, and Small (2008) show that composite factors obtained from high-frequency macroeconomic indicators and soft information such as surveys and significantly improve both **nowcasts** and forecasts of GDP growth" (emphasis added). The article written in 2008 by Plaintiff's founders referenced above and entitled "Nowcasting: The real-time informational content of macroeconomic data" is also cited as a reference in Ms. Guzman's article.

41.   In another article, entitled "The Case for Higher Frequency Inflation Expectations" dated June 2011, which can be found at https://mpra.ub.uni-muenchen.de/36656/1/MPRA_paper_36656.pdf and is attached hereto as Exhibit 58, Ms. Guzman again uses the term nowcast to identify and describe a prediction of economic conditions in the present or near-present and again cites to Plaintiff's founders' article on the subject.

42.   In another article, on which Defendant claims to base its own now-cast method, entitled "Internet Search Behavior as an Economic Forecasting Took: The Case of Inflation Expectations" dated November 29, 2011, which can be found at http://datascienceassn.org/sites/default/files/Internet%20search%20behavior%20as%20an%20economic%20forecasting%20tool%20the%20case%20of%20inflation%20expectations.pdf and is attached hereto as Exhibit 59, Ms. Guzman again uses the terms nowcast to identify and describe a prediction of economic conditions in the present or near-present, and the term nowcasting to identify and describe a method of providing predictions or estimates of present or near-present

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economic or financial condition, again mentioning Plaintiff's founders and their research: "Similarly, Giannone, Reichlin, and Small (2008) show that composite factors obtained from high-frequency macroeconomic indicators and soft information such as surveys and significantly improve both **nowcasts** and forecasts of GDP growth" (emphasis added). Ms. Guzman also writes: (i) "Ground-breaking work by Choi and Varian (2009) examines the use of Google Trends data to **nowcast** economic quantities, i.e. to estimate present economic activity that is subject to data reporting lags" (emphasis added); (ii) Google Trends data also has predictive power in **nowcasting** private consumption for Israel (Suhoy 2010) and in forecasting consumption for the US (Vosen and Schmidt 2011), with the authors finding that Google search query data outperforms survey-based indicators" (emphasis added); (iii) "Guzman (2009) shows how a composite factor constructed from a collection of surveys can improve both **nowcasts** and forecasts of aggregate stock returns as well as GDP growth" (emphasis added). Again, Ms. Guzman uses the article of Plaintiff's founders as a reference.

E.   Continued Generic and/or Descriptive Uses of Nowcast and Nowcasting

43.   From the time of Defendant's claimed date of first use of the Challenged Marks continuing to the present, economists and those in the financial-related industries have continued to use the terms nowcast or now-cast generically and/or descriptively to identify and describe a prediction of economic conditions in the present or near-present, and the terms nowcasting or now-casting to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions. Thus, the terms continue to be understood by the relevant consuming public as generic and/or descriptive terms.

1.   Articles and Books

44.   Since Defendant's claimed date of first use, economists and others have continued to publish articles and books using the terms nowcast or now-cast to identify and describe a

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prediction of economic conditions in the present or near-present, and the terms nowcasting or now-casting to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions. For example:

(a)   In 2012, Torsten Schmidt and Simeon Vosen published "A monthly consumption indicator for Germany based on internet search query data ", which can be found at https://www.econstor.eu/bitstream/10419/141447/1/TSchmidt_2012_A-monthly-consumption.pdf and is attached hereto as Exhibit 60.

(b)   In 2012, Volker Wieland and Maik Wolters published "Macroeconomic model comparisons and forecast competitions", which can be found at https://voxeu.org/article/failed-forecasts-and-financial-crisis-how-resurrect-economic-modelling?quicktabs_tabbed_recent_articles_block=1 and relevant pages of which are attached hereto as Exhibit 61.

(c)   In 2012, Scott H. Holan, Wen-His Yang, David S. Matteson, Christopher K. Wikle published "An approach for identifying and predicting economic recessions in real-time using time–frequency functional models", the abstract of which can be found at http://onlinelibrary.wiley.com/doi/10.1002/asmb.1954/full and is attached hereto as Exhibit 62.

(d)   In 2012, Tanya Molodtsova and David Papel published, "Taylor Rule Exchange Rates Forecasting During the Financial Crisis", which can be found at http://www.appstate.edu/~molodtsovat/molodtsova_papell.pdf and relevant pages of which are attached hereto as Exhibit 63.

(e)   In 2012, Chiara Scotti published "Real-time Aggregation of Macroeconomic Surprises: a Real Activity Surprise Index", which can be found at https://pdfs.semanticscholar.org/d164/37c8a9d913e2a2d47f7fea56fcb25d0ede56.pdf and relevant pages of which are attached hereto as Exhibit 64.

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(f)   In 2012, Jeffrey R. Campbell, Charles L. Evans, Jonas D.M. Fisher, and Alejandro Justiniano published "Macroeconomic Effects of Federal Reserve Forward Guidance", which can be found at https://www.econstor.eu/bitstream/10419/70528/1/728811251.pdf and relevant pages of which are attached hereto as Exhibit 65.

(g)   2012, Antonello D'Agostino and Bernd Schnatz published "Survey-Based Nowcasting of US Growth: A Real-time Forecast Comparison Over More Than 40 Years", which can be found at https://www.econstor.eu/bitstream/10419/153888/1/ecbwp1455.pdf and relevant pages of which are attached hereto as Exhibit 66.

(h)   In 2013, Vladimir Kuzin, Massimiliano Marcellino, and Christian Schumacher published "Pooling versus model selection for nowcasting GDP with many predictors: Empirical evidence for six industrialized countries", which can be found at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.460.4469&rep=rep1&type=pdf and is attached hereto as Exhibit 67.

(i)   In 2013, Jennifer L. Castle, David F. Hendry and Oleg I. Kitov published "Forecasting and Nowcasting Macroeconomic Variables: A Methodological Overview", which can be found at https://www.researchgate.net/profile/David_Hendry9/publication/320228042_Forecasting_and_Nowcasting_Macroeconomic_Variables_A_Methodological_Overview/links/59d62699aca2725954c7c0aa/Forecasting-and-Nowcasting-Macroeconomic-Variables-A-Methodological-Overview.pdf and is attached hereto as Exhibit 68.

(j)   In 2013, Gary Koop and Luca Onorante published "Macroeconomic Nowcasting Using Google Probabilities", which can be found at https://pdfs.semanticscholar.org/4ed9/18f072e86a48cd49f96cdda008b9c9e6927c.pdf and is attached hereto as Exhibit 69.

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(k)   In 2013, Dolan Antenucci, Michael J. Cafarella, Margaret C. Levenstein, Christopher Ré, and Matthew D. Shapiro published "Ringtail: Feature Selection for Easier Nowcasting", which can be found at https://pdfs.semanticscholar.org/b898/b58ee8e26e79b32046baaf92fd66b740e90b.pdf and is attached hereto as Exhibit 70.

(l)   In 2013, Andrea Giusto and Jeremy Piger published "Nowcasting U.S. Business Cycle Turning Points with Vector Quantization", which can be found at https://cdn.dal.ca/content/dam/dalhousie/pdf/faculty/science/economics/RePEc/dal/wparch/GP_09_26_2013.pdf and relevant pages of which are attached hereto as Exhibit 71.

(m)   In 2013, Lenka Herrmannová published "Forecasting and Nowcasting Power of Confidence Indicators: Evidence for Central Europe", which can be found at https://dspace.cuni.cz/bitstream/handle/20.500.11956/56577/RPTX_2012_2_11230_0_409860_0_139767.pdf?sequence=1 and relevant pages of which are attached hereto as Exhibit 72.

(n)   In 2013, the University of Michigan published "Nowcasting Takes Off", which can be found at http://www.eecs.umich.edu/eecs/about/articles/2013/Nowcasting_refined.html and is attached hereto as Exhibit 73.

(o)   On April 4, 2014, a book by James Picerno was published entitled *Nowcasting The Business Cycle: A Practical Guide For Spotting Business Cycle Peaks* which is entirely about nowcasting and creating nowcasts and relevant pages of which are attached hereto as Exhibit 74.

(p)   In 2014, Cathal O'Donoghue and Jason Loughrey published "Nowcasting in Microsimulation Models: A Methodological Survey", which can be found at http://jasss.soc.surrey.ac.uk/17/4/12.html and is attached hereto as Exhibit 75.

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(q)   In 2014, Scott A. Brave and R. Andrew Butters published "Nowcasting using the Chicago Fed National Activity Index", which can be found at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.901.2888&rep=rep1&type=pdf and is attached hereto as Exhibit 76.

(r)   In 2014, Patrick Higgins published "GDP Now: A model for GDP "Nowcasting", which can be found at https://www.econstor.eu/bitstream/10419/101002/1/wp1407.pdf and relevant pages of which are attached hereto as Exhibit 77.

(s)   In 2014, David Byrne, Kieran McQuinn, and Ciara Morley published "Nowcasting and the Need for Timely Estimates of Movements in Irish Output", which can be found at https://www.esri.ie/pubs/QEC2014AUT.pdf#page=95 and relevant pages of which are attached hereto as Exhibit 78.

(t)   In 2014, Nkolaos Kourentzesi and Fotios Petropoulos published "Increasing knowledge base for nowcasting GDP by quantifying the sentiment about the state of economy", which can be found at http://kourentzes.com/forecasting/wp-content/uploads/Kourenztes_Petropoulos_nowcasting.pdf and is attached hereto as Exhibit 79.

(u)   In 2014, Davor Kunovac and Borna Špalat published "Nowcasting GDP Using Available Monthly Indicators", which can be found at http://www.hnb.hr/repec/hnb/wpaper/pdf/w-039.pdf and relevant pages of which are attached hereto as Exhibit 80.

(v)   In 2014, the Massachusetts Institute of Technology published "The Emerging Pitfalls of Nowcasting with Big Data", which can be found at https://www.technologyreview.com/s/530131/the-emerging-pitfalls-of-nowcasting-with-big-data/ and relevant pages of which are attached hereto as Exhibit 81.

(w)   In 2015, the United Nations published a *United Nations Handbook on Economic Tendency Surveys*, which can be found at https://unstats.un.org/unsd/nationalaccount/docs/ETS_Handbook_wCover.pdf and relevant pages of which are attached hereto as Exhibit 82.

(x)   In 2015, Alberto Caruso published "Nowcasting Mexican GDP", which can be found at https://dipot.ulb.ac.be/dspace/bitstream/2013/219871/3/2015-40-CARUSO-nowcasting.pdf and is attached hereto as Exhibit 83.

(y)   In 2015, Andrius Guzavicius published "Nowcasting commodity markets using real time data stream", which can be found at https://ac.els-cdn.com/S1877042815057924/1-s2.0-S1877042815057924-main.pdf?_tid=spdf-5a9850c4-374f-428a-a7ec-0324740e5bb6&acdnat=1519664808_9045a874864699721d924b5fb6567ec4 and is attached hereto as Exhibit 84.

(z)   In 2015, Steffen R. Henzel, Robert Lehmann, and Klaus Wohlrabe published "Nowcasting Regional GDP: The Case of the Free State of Saxony", which can be found at https://www.econstor.eu/bitstream/10419/110850/1/cesifo_wp5336.pdf and is attached hereto as Exhibit 85.

(aa)   In 2015, John W. Galbraith and Greg Tkacz published "Nowcasting GDP with electronic payments data", which can be found at https://www.econstor.eu/bitstream/10419/154645/1/ecbsp10.pdf and is attached hereto as Exhibit 86.

(bb)   In 2016, Kevin Kovacs, Bryan Boulier, and Herman Stekler published "Nowcasting German Turning Points Using CUSUM Analysis", which can be found at https://www2.gwu.edu/~forcpgm/2016-014.pdf and is attached hereto as Exhibit 87.

(cc)   In 2016, Michele Modugno, Bais Soybilgen, M. Ege Yazgan published "Nowcasting Turkish GDP and News Decomposition", which can be found at https://www.researchgate.net/profile/Michele_Modugno3/publication/303395162_Nowcasting_T

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urkish_GDP_and_News_Decomposition/links/57a1c3a508aeef8f311d0e8e/Nowcasting-Turkish-GDP-and-News-Decomposition.pdf and relevant pages of which are attached hereto as Exhibit 88.

(dd)   In 2016, Ahmed M. Abdalla published "The Power of Aggregate Book-to-Market Innovations: Forecasting, Nowcasting, and Dating the Real Economy", which can be found at http://econ.au.dk/fileadmin/Economics_Business/Research/Seminars/2017/Final_The_Paper_Aggregate_BooktoMarket_-_Copy.pdf and is attached hereto as Exhibit 89.

(ee)   In 2016, Leif Anders Thorsrud published "Nowcasting using news topics Big Data versus big bank", which can be found at https://brage.bibsys.no/xmlui/bitstream/handle/11250/2429268/Working_CAMP_6-2016.pdf?sequence=1 and relevant pages of which are attached hereto as Exhibit 90.

(ff)   In 2016, Hyun Hak Kim and Norman R. Swanson published "Methods for Pastcasting, Nowcasting and Forecasting Using Factor-MIDAS", which can be found at http://econweb.rutgers.edu/nswanson/papers/factormidaskorea20160815.pdf and relevant pages of which are attached hereto as Exhibit 91.

(gg)   In 2017, Francis X. Diebold published a book entitled "Forecasting in Economics, Business, Finance and Beyond", which can be found at http://www.ssc.upenn.edu/~fdiebold/Teaching221/Forecasting.pdf and relevant pages of which are attached hereto as Exhibit 92.

(hh)   In 2017, Tony Chernis and Rodrigo Sekkel published "A Dynamic Factor Model for Nowcasting Canadian GDP Growth", which can be found at https://www.econstor.eu/bitstream/10419/171956/1/878898697.pdf and relevant pages of which are attached hereto as Exhibit 93.

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(ii)   In 2017, Clément Marsilli published "Nowcasting US inflation using a MIDAS augmented Phillips curve", which can be found at https://www.inderscienceonline.com/doi/pdf/10.1504/IJCEE.2017.080649 and is attached hereto as Exhibit 94.

(jj)   In 2017, Tatjana Dahlhaus, Justin-Damien Guénette and Garima Vasishtha published "Nowcasting BRIC+M in Real Time", which can be found at https://www.econstor.eu/bitstream/10419/123783/1/83798906X.pdf and relevant pages of which are attached hereto as Exhibit 95.

(kk)   In 2017, Juan Antolın Dıaz, Thomas Drechsel, and Ivan Petrella published "Advances in Nowcasting Economic Activity", which can be found at https://www.bde.es/f/webbde/INF/MenuHorizontal/SobreElBanco/Conferencias/2017/171019_09.15-10.45_2_ANTOLIN.pdf and relevant pages of which are attached hereto as Exhibit 96.

(ll)   In 2017, Edward L. Glaeser, Hyunjin Kim, and Michael Luca published "Nowcasting the Local Economy: Using Yelp Data to Measure Economic Activity", which can be found at http://www.hbs.edu/faculty/Publication%20Files/18-022_b618d193-9486-4de3-abc4-232e1baecbeb.pdf and relevant pages of which are attached hereto as Exhibit 97.

2.   Economic Courses and Conferences

45.   There are and have been numerous economic courses as well as economic conferences that further illustrate the merely descriptive and/or generic nature of the term now-cast. For example:

(a)   The Tuck School of Economics at Dartmouth University offers a course in "Nowcasting the Global Economy." Attached hereto as Exhibit 97.1, which can be found at http://www.tuck.dartmouth.edu/mba/academic-experience/elective-curriculum/elective-courses#economics, is a printout of the relevant Dartmouth web page with the course description detailed below:

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This seminar-style minicourse will introduce the concept and practice of Nowcasting in the context of the global economy. Nowcasting refers to the use of alternative (often high frequency) data sources such as Google Trends to improve our understanding of the current state of economic activity. The use of such data is increasingly commonplace at Central Banks across the globe and is beginning to spread to the private sector, especially to financial institutions and consumer goods companies. This heart of this course is a hands-on, group oriented exercise. This course will start with an introduction to the statistical techniques needed to develop simple prediction models for economic variables such as unemployment claims and auto sales. Both model choice and goodness of fit will be the focus of the early sessions. Working in teams, students will choose an economic variable and develop and present their own Nowcasting model.

(b)   King's College in London advertised that it was seeking PhD students for a project involving, among other things, "improving the measurement of GDP at different publication horizons with a focus on nowcasting and reconciling the discrepancies in the different approaches to the measurement of GDP" and "building and evaluating a suite of nowcasting models which are designed to deal with large datasets", attached hereto as Exhibit 98 is a printout of the relevant web page, which can be located at: https://armacad.info/kings-college-london-phd-studentships-in-economic-measurement-economic-statistics-centre-of-excellence-2017-uk

(c)   A paper entitled "Nowcasting U.S. Quarterly GDP" was presented at the University of Kansas Student Conference for the academic year 2013-2014, a printout of the web page is attached hereto as Exhibit 99 and can be located at: https://economics.ku.edu/student-conferences

(d)   At Carnegie Mellon University's Society for Economic Measurement 2016 Annual Conference a session was offered entitled "Real-Time Nowcasting of Nominal GDP with Structural Breaks", a printout of the webpage regarding this conference is attached hereto as Exhibit 100 and can be located at: http://repository.cmu.edu/sem_conf/2016/

(e)   The Federal Reserve Bank of New York is sponsoring a research program seeking research analysts from universities, listing among the areas of research "nowcasting and

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forecasting using large macroeconomic data sets", which is found at https://economics.harvard.edu/files/economics/files/ra_brochure_ny_fed.pdf and attached hereto as Exhibit 101.

(f)   The University of Notre Dame's Center for Accounting and Research Education is hosting a conference, listing among the topics to be covered "Measuring, forecasting, and nowcasting macroeconomic activity using firm-level information", which is found at https://care-mendoza.nd.edu/events/2018/05/17/2018-care-conference/ and attached hereto as Exhibit 102.

(g)   Northwestern University sponsored an Advanced Workshop for Central Bankers, and among the topics listed was "A comprehensive review of forecasting methods. Topics include VARs, dynamic factor models, robust Bayes inference, nowcasting, and long-run forecast uncertainty", which is found at http://www.kellogg.northwestern.edu/faculty/rebelo/cied/wposters/CIM_2016brochure.pdf and attached hereto as Exhibit 103.

(h)   MIT held an event in 2012 entitled "Beyond Big Data: Nanodata and Nowcasting" which is found at http://ebusiness.mit.edu/news/past_events/events-2012.html and attached hereto as Exhibit 104.

(i)   In its Masters Program in the Institute of Social and Economic Research and Policy, Columbia University lists a course entitled QMSS Seminar Series (QMSS G4021 & G4022) with topics that include "Now-Casting and the Real-Time Data-Flow", which is found at http://www.qmss.columbia.edu/courses and attached hereto as Exhibit 105.

(j)   The Department of Economics: University of Illinois at Urbana-Champaign held an Annual Meeting of the Midwest Economics Group, with a session on "Nowcasting

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Nominal GDP with the Credit-Card Augmented Divisia Monetary Aggregates", which is found at http://www.econ.uiuc.edu/~meg2016/program_MEG2016 and attached hereto as Exhibit 106.

(k)   The European Central Bank and the International Institute of Forecasters held a workshop in 2014 devoted to nowcasting. Attached hereto as Exhibit 107 is a copy of the printout from the relevant website describing the conference, which can be found at https://forecasters.org/wp-content/uploads/11th-IIF-Workshop_BigData.pdf.

(l)   Prior to Defendant's alleged first use date of the Challenged Marks, Norges Bank held a conference on recent developments in the economics and macroeconomics of finance, and among the topics presented was "Nowcasting at the Riksbank". Attached hereto as Exhibit 108 is a copy of the printout from the relevant website describing the conference, which can be located at: https://www.norges-bank.no/en/about/Research/Conferences/2010-Recent-Developments-in-the-Econometrics-of-Macroeconomics-and-Finance/.

(m)   Florida State University has a course called Analysis of Economic Data and in the course description the "Course Goals and Objectives" state that "You will be able to use and summarize the results of basic time series methods including: Seasonal Adjustment, De-Trending, ARIMA, VAR, VECM, Mixed-Frequencies, Nowcasting, and Dynamic Factor Analysis". Attached hereto as Exhibit 109 is a copy of the printout from the relevant website describing the course which can be located at: - https://coss.fsu.edu/maep/sites/default/files/ECO5434_Beaumont.pdf.

(n)   Brandeis has a course called Forecasting in Finance and Economics, and among the topics covered is "nowcasting". Attached hereto as Exhibit 110 is a copy of the printout from the relevant website describing the course which can be located at: http://people.brandeis.edu/~blebaron/classes/fin250a/Introduction.html.

3.   Other Companies Using Nowcast and Nowcasting Generically and/or Descriptively

46.   A number of banks, economic research companies, and others have created their own nowcast methods and produce their own nowcasts, including, but not limited to the following:

(a)   Several Federal Reserve banks around the country produce their own nowcasts. Attached hereto as Exhibit 111 are printouts of examples of how the terms nowcast and nowcasting are used descriptively and/or generically by the Federal Reserve to identify and describe an prediction of economic conditions in the present or near-present and a method of providing predictions or estimates of present or near-present economic or financial conditions.

(b)   Putnam Global has its own Putnam Global GDP Nowcast index. Attached hereto as Exhibit 112 is a printout of an example of how the term nowcast is used descriptively and/or generically by Putnam Global to identify and describe a prediction of economic conditions in the present or near-present, which can also be viewed here: https://www.putnam.com/institutional/content/macroReports/200-putnam-global-gdp-nowcast-13.

(c)   A company called Nowcasting Scotland creates various nowcasts using nowcasting methods, and uses the terms extensively to identify and describe economic predictions of present or near-present conditions and methods of providing predictions or estimates of present or near-present economic or financial conditions. Attached hereto is an example of Nowcasting Scotland's website as Exhibit 113 and can also be viewed at the following link: https://nowcastingscotland.com/.

(d)   PwC Global ("PwC") uses a nowcasting model in its business and uses the term to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions. Attached hereto as Exhibit 114 is a copy of a printout

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from PwC's website, which can be located here: https://www.pwc.com/gx/en/issues/economy/global-economy-watch/economic-integration.html.

(e)   Ten-X uses nowcasting to produce its own economic nowcasts in the real estate market. Attached hereto as Exhibit 115 is an example of how Ten-X uses the nowcast and nowcasting terms to identify and describe an economic prediction of present or near-present conditions and a method of providing predictions or estimates of present or near-present economic or financial conditions, and the link can be viewed here: https://mediaroom.ten-x.com/2016-06-23-Ten-X-Commercial-Real-Estate-Nowcast-Offers-First-Glimpse-At-Midyear-Pricing-Trends.

(f)   Fulcrum Asset Management produces its own nowcasts and uses the term to identify and describe its nowcasts. Attached hereto as Exhibit 116 is an example of how Fulcrum uses the terms nowcast and nowcasting to identify and describe an economic prediction of present or near-present conditions and a method of providing predictions or estimates of present or near-present economic or financial conditions, and the link can be viewed here: https://www.fulcrumasset.com/blog/notes/global-surveys-hard-data-fake-news/?ref=

4.   Job Listings for Economists and Economic Researchers

47.   A further indication of the fact that the terms nowcast or now-cast are understood by the relevant public to identify and describe a prediction of economic conditions in the present or near-present, and the terms nowcasting or now-casting are understood to identify and describe a method of providing predictions or estimates of present or near-present economic or financial conditions, is that several job listings for economists define the job duties as encompassing nowcasts and nowcasting. For example:

(a)   NJF Global Holdings posted a job for a "Qualitative Researcher – NowCasting, Economic Forecasting Using Real Time Data", which can be found at http://njfsearch.com/jobs/detail/job/Quantitative-Researcher-%E2%80%93-NowCasting-

Economic-Forecasting-using-real-time-data-New-York-376 and is attached hereto as Exhibit 117.

The listing states that the company is "Ideally seeking a candidate with experience in Now

Casting" and describes the position as follows:

> This position is with a hedge fund in New York and will involve working in the quantitative research team within the systematic trading group. The role will involve conducting empirical research in order to predict economic announcements using **now casting** techniques. The signals will be used in systematic macro investment strategies. (emphasis added)

(b)   A job listing by Dataium listed an opening for a "Senior Economist I, Global

Construction" with one of the duties of the job described as "Run forecast files and assist with add-

factoring process, bringing relevant high frequency leading indicators to guide the 'nowcast'". A

copy of this job listing, which can be found at https://www.theladders.com/job/senior-economist-

i-global-construction-dataium-cambridge-ma_35977966, and is attached hereto as Exhibit 118.

(c)   A 2013 Bank of Canada job listing for Senior Analysts, seeking candidates

with qualifications including those who are conducting research on "nowcasting and forecasting",

which can be found at https://www.aeaweb.org/joe/archive/listing.php?JOE_ID=201312_398899

and is attached hereto as Exhibit 119.

(d)   A listing by Citi Global Economics Team looking for a "Quantitative

Economist" describing the responsibilities to include "Developing (and maintaining) quantitative

models for nowcasting, forecasting and simulating macroeconomic and financial developments",

which can be found at https://www.aeaweb.org/joe/listing.php?JOE_ID=2017-01_111457796 and

is attached hereto as Exhibit 120.

5.   Resumes and CVs of Economists

48.   As further indication of the fact that the terms nowcast, now-cast, nowcasting, and

now-casting are understood by those in the economics field as descriptive and/or generic terms

identifying and describing a prediction of economic conditions in the present or near-present and

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a method of providing predictions or estimates of present or near-present economic or financial conditions, several resumes and CVs of economists include references to the individual having an interest in or experience in nowcasts and nowcasting. For example:

(a)   The CV of Christian Schumacher, an economist who describes his research interests as "Nowcasting and forecasting, econometrics of mixed-frequency data, dynamic factor models with large data sets, state space models", which can be found at https://www.bundesbank.de/Redaktion/EN/Downloads/Bundesbank/Research_Centre/Researcher/schumacher_christian.pdf?__blob=publicationFile and is attached hereto as Exhibit 121.

(b)   The CV of Professor of Economics Ege Yazgan, with one of his accomplishments listed as "the founder of the Turkish GDP nowcast web page simditahmin.com", which can be found at http://www.egeyazgan.com/cv/ and is attached hereto as Exhibit 122.

(c)   The CV of economist Simon Kirby, who lists his research interests as "Macroeconomic modelling, forecasts and nowcasts of the UK economy, labour market policy evaluation, and industrial/ employment relations", which can be found at https://www.niesr.ac.uk/users/kirby-s and is attached hereto as Exhibit 123.

(d)   The website of economist Jack Fosten, who describes his interests as "applied econometrics, particularly nowcasting macroeconomic variables, and topics in energy and environmental economics", which can be found at https://sites.google.com/site/jackfosten/home and is attached hereto as Exhibit 124.

(e)   The website of economist Greg Tkacz, who describes his interests as "forecasting and nowcasting with big data, and studying the inter-relationships between financial markets and the macroeconomy", which can be found at http://www.tkacz.ca/ and is attached hereto as Exhibit 125.

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(f)   The webpage of Economist and Associate Professor of Economics Peter Fuleky, which includes, among his lists of accomplishments, recent papers that focused on "mixed frequency modeling of economic relationships and nowcasting", which can be found at http://uhero.hawaii.edu/41/ and is attached hereto as Exhibit 126.

(g)   The webpage of Professor of Economics Carl Bonham, describing his current research as "mixed frequency models for nowcasting inputs for UHERO's quarterly Hawaii Forecasting System", which can be found at http://www.uhero.hawaii.edu/32/ and is attached hereto as Exhibit 127"

(h)   The CV of Ahmed M. Abdalla of the London School of Economics, describing his research interests as including "nowcasting", which can be found at https://www.clsbe.lisboa.ucp.pt/system/files/assets/files/ahmed-cv-aaupdated.pdf and is attached hereto as Exhibit 128.

F.   The Terms NOWCAST and NOW-CAST are Generic and/or Merely Descriptive

49.   The terms NOWCAST and NOW-CAST are generic and therefore not registerable as trademarks. The genus of services at issue is the economic research services performed by Defendant that consist of using a method of providing predictions or estimates of present or near-present economic or financial conditions. As shown by the allegations set forth herein and the vast uses of the terms NOWCAST and NOW-CAST to refer to a prediction of economic conditions in the present or near-present, and the terms NOWCAST and NOW-CAST are known and understood by the relevant consuming public primarily to refer to the genus of services for which Defendant has registered and uses the Challenged Mark. Further, the terms NOWCAST and NOW-CAST name the central focus and key aspect of the services for which Defendant has registered and uses the Challenged Marks, namely, predictions of economic conditions in the present or near-present.

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50.   If the terms NOWCAST and/or NOW-CAST are found not to be generic, the terms NOWCAST and NOW-CAST merely descriptive under the Lanham Act, 15 U.S.C. §1052(e) when applied to Defendant's services, namely economic predictions and forecasts, because the terms describes a quality, feature, function, or characteristic of Defendant's services, namely creating predictions of economic conditions in the present or near present. The terms NOWCAST and NOW-CAST are also incapable of acquiring any secondary meaning given: (a) the widespread use of these terms by others in the economics field to identify and describe a prediction of economic conditions in the present or near-present; (b) the fact that the terms NOWCAST and NOW-CAST were understood by the relevant consuming public to identify and describe a prediction of economic conditions in the present or near present long before Defendant's claimed date of first use; and (c) the fact that the terms NOWCAST and NOW-CAST continue to be understood by the relevant consuming public to identify and describe a prediction of economic conditions in the present or near present, and the consuming public does do not view Defendant as the source of the services provided using the terms.

51.   The relevant consumers for Defendant's services, namely those interested in economic predictions and forecasting such as economists, investors, research analysists, students, and others, do not perceive the terms NOWCAST and/or NOW-CAST as an indicator of source for any one individual or entity. Instead, the primary significance of the terms NOWCAST and NOW-CAST is understood by the relevant public to refer to the category of services identified in Defendant's registration, namely, nowcasting services that provide predictions of economic conditions in the present or near-present.

52.   If the terms nowcast, now-cast, nowcasting, and now-casting are associated with any one individual or entity, it is likely that they are associated with Plaintiff's founders, who are

considered leaders in the field of economic nowcasting. For example, articles written by Plaintiff's founders on the subject of nowcasting have been cited by other economists and researchers at least 1000 times over the last 10 years. In contrast, Plaintiff was only able to find less than 100 citations to articles written by Defendant's founder. Further, while Plaintiff's founders have appeared at economic conferences and workshops over the last 10 years to speak on the subject of economic nowcasting, Plaintiff was unable to find even one conference attended by Defendant or its founder in which Defendant or its founder spoke on the subject of economic nowcasting. Therefore, the Challenged Marks have not acquired and cannot acquire any secondary meaning or distinctiveness as the Challenged Marks do not distinguish Defendant as the source of services to which the Challenged Marks pertain.

53.   The examples attached hereto are just a small sampling of the vast use of nowcast, now-cast, nowcasting, and now-casting by those within the economic and financial industries to refer to and/or describe the exact type of economic predictions and general methodology that Defendant performs and shows that the relevant consuming public does not view these terms as source indicators. Therefore, no one entity or individual owns the exclusive right to use the terms in connection with economic predictions and forecasting. Defendant is not entitled to a trademark registration for the term NOWCAST or NOW-CAST, which is used by Defendant to create nowcasts and engage in nowcasting services.

54.   Plaintiff will be damaged by the continued registration of the Challenged Marks because their registration is contrary to public policy and will deprive Plaintiff, and other economic and financial companies, researchers, economists and others of the ability to continue to use these generic and/or merely descriptive terms in the economics prediction and forecasting industries.

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55.   Further, Plaintiff will be damaged by the continued registration of the Challenged Marks because Defendant has alleged that Plaintiff is infringing the Challenged Marks by Plaintiff's use of the Contested Name, and Defendant has sent a cease and desist letter to Plaintiff in that regard.

56.   If, in the unlikely event that it is determined that the Challenged Marks are a valid trademarks, despite all the evidence to the contrary, to the extent there is any confusion, it is Defendant who would need to cease using the Challenged Marks because Plaintiff has prior use of the Contested Name, and the Challenged Marks should be cancelled on that ground as well.

G.   Defendant's Registrations Were Procured Through Fraud on the USPTO

57.   In addition, Defendant committed fraud on the USPTO when filing and prosecuting its applications to register the Challenged Marks because Defendant knew, based on Defendant's own generic and/or merely descriptive uses of the marks and the fact that the term had already gained widespread usage by third parties throughout the relevant industries as a generic and/or merely descriptive term, that the marks were not protectable as trademarks.

58.   In fact, Defendant was well-aware of the prior generic and/or merely descriptive usage of the term by Plaintiff's founders because Defendant's founder herself wrote several articles in which she referenced one of Plaintiff's founders 2008 nowcasting articles, entitled "Nowcasting: The real-time informational content of macroeconomic data."

59.   Yet, when Defendant applied to register the marks, Defendant stated under oath, that the Defendant knew of no third parties that had a right to use the terms, and the USPTO relied upon Defendant's sworn statement when granting the registrations. Had the USPTO known that the marks were generic and/or merely descriptive of the services listed in the application, the USPTO would not have granted the registrations.

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60.   Defendant has since continued to perpetrate this fraud by attempting to use its trademark registrations to prevent others from using terms that Defendant knows or should know are generic and/or merely descriptive terms, not capable of any trademark protection.

61.   In fact, in Defendant's Application, which has not yet matured to registration, in response to Office Actions in which the Examining Attorney rejected the registration on the ground that the term was merely descriptive, Defendant mislead the Examining Attorney by falsely claiming that there was only a "scant" amount of other usage of the term, the term was not generic within the relevant industries, and the term had no meaning within the relevant industries, even though Defendant was certainly aware, or should have been aware, that such statements were false.

H.   Defendant Has Sought to Avoid Substantive Adjudication of the Challenged Marks in the TTAB Proceedings

62.   Plaintiff initiated TTAB Proceedings over a year ago, and due to Defendant's tactics in filing numerous motions on technical and procedural grounds, Plaintiff has still not been able to present its overwhelming and incontrovertible evidence to the TTAB. Upon information and belief, Defendant is seeking to delay the resolution of the substantive issues, despite the overwhelming evidence that the Challenged Marks are generic and/or merely descriptive and not entitled to any trademark protection. All the while, Defendant continues to make unfounded allegations of infringement against Plaintiff and third parties.

63.   Because the TTAB has no jurisdiction to decide infringement claims, the only way Plaintiff can obtain full relief is to bring this action. Until a determination of both non-infringement and the invalidity of the Challenged Marks is determined, there will continue to be a cloud over Plaintiff's and third party's ability to use the Contested Name and to use the terms nowcast and nowcasting in connection with Plaintiff's nowcasting business.

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FIRST CAUSE OF ACTION
(DECLARATORY RELIEF: NON-INFRINGEMENT)

64.   Plaintiff repeats and re-alleges the statements made in paragraphs 1 through 63 as if fully set forth herein.

65.   An actual controversy exists under 15 U.S.C. §§ 1114 and 1125 between Plaintiff and Defendant concerning Defendant's right to continue to use the Contested Name and the terms nowcast, nowcasting, and derivations thereof, which requires a declaration of rights by this court.

66.   Plaintiff seeks a declaration under 28 U.S.C. §§ 2201 and 2202 that its use of the Contested Name, as well Plaintiff's use of the terms nowcast, nowcasting and derivations thereof in connection with its business, do not infringe, dilute or violate Defendant's rights under the trademark laws of the United States, including 15 U.S.C. §§ 1114 and 1125, or any other right of Defendant. Defendant does not own valid trademark rights in the terms NOWCAST or NOW-CAST, and even if Defendant owned any such rights, Plaintiff has prior use of the Contested Name as well as the terms nowcast, nowcasting, and derivations thereof. Accordingly, Plaintiff does not infringe or violate any of Plaintiff's rights.

SECOND CAUSE OF ACTION
(CANCELATION OF DEFENDANT'S NOWCAST REGISTRATION)

67.   Defendant repeats and re-alleges the statements made in paragraphs 1 through 63 as if fully set forth herein.

68.   The mark shown in United States Trademark Registration No. 4,341,813 is generic and/or merely descriptive without any secondary meaning due to the widespread usage of the mark by others to identify and refer to a type of economic prediction - the exact type of economic prediction in which Defendant purports to engage.

69.   United Stated Trademark Registration No. 4,341,813 was procured by Defendant through fraud on the USPTO; namely, when Defendant filed its application to register the mark, it

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falsely stated under oath that it knew of no third parties who had the right to use the mark for similar services. Defendant knew when it made this statement that the statement was false, and had the USPTO known of the actual facts, the USPTO would not have issued the registration.

70.   Finally, Plaintiff began using the Contested Name in 2010 and began using the Contested Name in the United States in May of 2011, prior to Defendant's alleged first use of NOWCAST. In addition, Plaintiff's founders began using the terms nowcast and nowcasting at least as early as 2005 to identify and describe a type of economic forecast. Therefore, Plaintiff has prior use and senior rights in the terms NOWCAST and NOWCASTING, and if there is confusion and NOWCAST is a valid trademark, as Defendant alleges, it is Defendant that must cease using the NOWCAST mark, and the NOWCAST registration should be cancelled on that ground as well.

71.   For these reasons, Plaintiff seeks an order pursuant to 15 U.S.C. § 1119 directing cancellation of the federal registration for United States Trademark Registration No. 4,341,813.

THIRD CAUSE OF ACTION
(CANCELATION OF DEFENDANT'S NOW-CAST REGISTRATION)

72.   Defendant repeats and re-alleges the statements made in paragraphs 1 through 63 as if fully set forth herein.

73.   The mark shown in United States Trademark Registration No. 4,341,811 is generic and/or merely descriptive without any secondary meaning due to the widespread usage of the mark by others to identify and refer to a type of economic prediction - the exact type of economic prediction in which Defendant purports to engage.

74.   United Stated Trademark Registration No. 4,341,813 was procured by Defendant through fraud on the USPTO; namely, when Defendant filed its application to register the mark, it falsely stated under oath that it knew of no third parties who had the right to use the mark for

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similar services. Defendant knew when it made this statement that the statement was false, and had the USPTO known of the actual facts, the USPTO would not have issued the registration.

75.   Finally, Plaintiff began using the Contested Name in 2010 and began using the Contested Name in the United States in May of 2011, prior to Defendant's alleged first use of NOW-CAST. In addition, Plaintiff's founders began using the terms nowcast and nowcasting at least as early as 2005 to identify and describe a type of economic forecast. Therefore, Plaintiff has prior use and senior rights in the terms NOW-CAST and NOW-CASTING, and if there is confusion and NOW-CAST is a valid trademark, as Defendant alleges, it is Defendant that must cease using the NOW-CAST mark, and the NOW-CAST registration should be cancelled on that ground as well.

76.   For these reasons, Plaintiff seeks an order pursuant to 15 U.S.C. § 1119 directing cancellation of the federal registration for United States Trademark Registration No. 4,341,811.

FOURTH CAUSE OF ACTION
(PERMANENT INJUNCTION)

77.   Plaintiff repeats and re-alleges the statements made in paragraphs 1 through 76 as if fully set forth herein.

78.   Plaintiff's use of the Contested Name and the terms nowcast and nowcasting, or any derivations thereof, do not infringe any of Defendant's rights under the United States trademark laws, including 15 U.S.C. § 1114 or §1125 or any other rights of Defendant.

79.   Despite this, Defendant has improperly threatened legal action against Plaintiff and has made a number of false and misleading statements regarding Plaintiff.

80.   Plaintiff has no adequate remedy at law for Defendant's behavior.

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81.   Therefore, Plaintiff requests the Court enter an order restraining Defendant from interfering with Plaintiff's use of either the Contested Name, the terms nowcast or nowcasting or any derivations thereof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests from this Court the following relief:

a) A declaration that Plaintiff's use of the Contested Name, the terms nowcasting, nowcasting, or any derivations thereof do not infringe, dilute, or violate any right of Defendant;

b) A declaration that Defendant does not possess any trademark rights in the terms NOWCAST, NOW-CAST, or any derivations thereof, or any other exclusive right to use the terms NOWCAST, NOW-CAST, or any derivations thereof, in connection with the economic prediction and financial industries;

c) An order, pursuant to 15 U.S.C. § 1119, directing the Commissioner of Patents and Trademarks to cancel the United States Registration No. 4,341,813on the grounds that (i) the mark is generic as applied to the services for which it is registered; (ii) if found not to be generic, the mark is merely descriptive as applied to the services for which it is registered and is incapable of acquiring secondary meaning; or (iii) if found to be a valid mark and likely to be confused with the Contested Name, the registration should be cancelled because Plaintiff has prior use of the Contested Name;

d) An order, pursuant to 15 U.S.C. § 1119, directing the Commissioner of Patents and Trademarks to cancel the United States Registration No. 4,341,811on the grounds that (i) the mark is generic as applied to the services for which it is registered; (ii) if found not to be generic, the mark is merely descriptive as applied to the services for which it is registered and is incapable of acquiring secondary meaning; or (iii) if found to be a

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valid mark and likely to be confused with the Contested Name, the registration should

be cancelled because Plaintiff has prior use of the Contested Name;

e) An order restraining Defendant from interfering with Plaintiff's use of either the

Contested Name, the terms nowcast, nowcasting, or any derivations thereof; and

f) An award of costs and reasonable attorneys' fees incurred in this action; and such other

and further relief as this Court may deem just and proper.

Dated: New York, New York
         March 19, 2018

                                   OLSHAN FROME WOLOSKY LLP

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